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EXAMINER

MCCALL, ERIC SCOTT

ART UNIT	PAPER NUMBER
2855	

DATE MAILED: 11/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/644,907

Applicant(s)

BOECK ET AL.

Examiner

Eric S. McCall

Art Unit

2855

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 is/are allowed.
- 6) ☒ Claim(s) 1-12, 14-19 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

TEST STAND WITH TIPPING DEVICE FOR MOTOR VEHICLES

FINAL OFFICE ACTION

In response to the Applicant's amendment dated Sep. 12, 2006.

CLAIMS

35 U.S.C. § 112

(First Paragraph)

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-12, 14-19, and 21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The Applicant has amended independent claim 1 to state that the lifting units include a respective piston rod *at least substantially fixedly oriented with respect to the upper frame unit*. However, the Applicant has not pointed out where in the originally filed disclosure support exists for such a limitation. As such, the Examiner has searched the originally filed disclosure and can not find support for such a limitation. Thus, the Applicant is not entitled to any protection that such a limitation would warrant.

Next, the Applicant has amended claim 1 to state that the four lifting units tip the upper frame *independently of at least two of the other three lifting units*. The Examiner has interpreted the phrase to mean that of the four lifting units, *a lifting unit* can tip the upper frame independently of two or three of the other lifting units. The Applicant has not identified the portion of the originally filed disclosure relied upon for supporting such a limitation. The Examiner has searched the originally filed disclosure and can not find support for a lifting unit (ie. one lifting unit) tipping the upper frame independently of the other *three* (of four) lifting units, and thus, the Applicant is not entitled to any protection that such a limitation would warrant.

The Applicant has amended independent claim 11 to state that the lifting means include piston rods *at least substantially fixedly oriented with respect to the upper frame unit*. However, the Applicant has not pointed out where in the originally filed disclosure support exists for such a limitation. As such, the Examiner has searched the originally filed disclosure and can not find support for such a limitation. Thus, the Applicant is not entitled to any protection that such a limitation would warrant.

The Applicant has amended independent claim 16 to state that the lifting units are *at least substantially fixedly oriented with respect to the upper frame unit*. However, the Applicant has not pointed out where in the originally filed disclosure support exists for such a limitation. As such, the Examiner has searched the originally filed disclosure and can not find support for such a limitation. Thus, the Applicant is not entitled to any protection that such a limitation would warrant.

Claims 1-12, 14-19, and 21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

With respect to amended independent claims 1, 11, and 16, the Applicant has not described in the specification how the respective piston rod of the four lifting units/means (or the lifting unit itself) is at least substantially fixedly oriented with respect to the upper frame.

With respect to claim 1, the Applicant has not described in the specification how the four lifting units are operable to tip the upper frame independently of at least two of the other three lifting units as claimed (The Examiner notes that this limitation is self-contradicting).

(Second Paragraph)

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-12, 14-19, and 21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention.

The Applicant has amended the independent claims 1 and 11 to state that each of the four lifting units have a respective piston rod (or the lifting units themselves in claim 16) *at least substantially fixedly oriented* with respect to the upper frame unit. The Examiner deems the phrase *at least substantially fixedly oriented* as being indefinite as to the meaning thereof

because either an object is fixed or it is not fixed. Uncertainty exists as to how an object can be at least substantially fixed. The Examiner can find no mention of such a phrase in the Applicant's specification and thus a definition thereof.

Claims 1 and 11 now set forth that the piston rods of the four lifting units are substantially fixedly oriented with respect to the upper frame unit and extendible substantially orthogonal to the lower frame unit. The Examiner points out that such claim language would prevent the upper frame from tipping relative to the lower frame unit as is also claimed and thus a contradiction exists.

Furthermore the Applicant's amendment to claim 1 regarding the tipping of the upper frame *independently of at least two of the other three lifting units* is indefinite because the context in which the amendment is used states that "the four lifting units are operable to tip the upper frame independently of at least two of the other three lifting units" which is self contradicting as to how four units can perform a task independently of two or three of the same units.

35 U.S.C. § 102(b)

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 8, 9, 11, 12, 14, 15, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Taylor (2,929,519).

With respect to amended independent claim 1 and added claim 21, Taylor suggests (Fig. 1) a stand having a tipping device comprising:

- a lower frame unit (the base frame assembly 12);
- an upper frame unit (the pair of supporting rails 16) configured to tip relative to the lower frame unit; and

four lifting units (two fore 14 and two aft 15 linkage assemblies; Fig. 5) respectively disposed in corner zones of the frame units, each of the lifting units including a respective piston rod which is interpreted as being at least substantially fixedly oriented with respect to the upper frame unit since the Applicant has not defined the direction of orientation and the point of time of orientation and extendible in a direction *at least* substantially orthogonal to the lower frame unit and connected to the upper frame, and operable to independently tip the upper frame (each

lifting unit includes a cylinder which provides the ability for each lifting unit to move independently of the other lifting units).

It is noted that the phrase “Test stand for motor vehicles” in the preamble of claim 1 has not been given patentable weight because the body of the claim does not rely upon the said phrase for completeness (ie. the body of the claim does not require a test stand for a motor vehicle).

It is noted that the prior art of Taylor suggests that each piston rod extends in a direction at least substantially orthogonal to the lower frame as claimed. Figures 4 and 6 of Taylor show a lower frame unit (12) which is angled upward towards the middle thereof. When the piston rod of the cylinder (48) extends and raises the upper frame unit, there comes a point in time when the piston rod is substantially orthogonal to the lower frame unit because of the angle in the lower frame unit. This point in time is approximately shown in Figure 6 of Taylor because if a line was drawn along the extending piston rod, that line would be *at least substantially orthogonal* to the lower frame unit as claimed.

With respect to claim 2, Taylor suggests in Fig. 1 the lower frame unit and the upper frame unit are interconnected exclusively via the lifting units (Fig. 6).

With respect to claim 8, Taylor suggests the four lifting units being configured exclusively for tipping the upper frame unit (Fig. 5).

With respect to claim 9, Taylor suggests the lifting units are controlled with a control terminal via a central control unit (Fig. 1; 81-84, 86).

With respect to independent claim 11, Taylor suggests a stand having a tipping device comprising:

- a lower frame unit (12);

- an upper frame unit (the pair of supporting rails 16) configured to tip relative to the lower frame unit; and

- lifting means (two fore 14 and two aft 15 linkage assemblies; Fig. 5) attached to the lower frame unit and connectable to the upper frame that tip the upper frame, the lifting means including piston rods at least substantially fixedly oriented with respect to the upper frame unit, since the Applicant has not defined the direction of orientation and the point of time of orientation, and extendible in a direction at least substantially orthogonal to the lower frame unit and connected to the upper frame, and providing the sole source of tipping.

Figures 4 and 6 of Taylor show a lower frame unit (12) which is angled upward towards the middle thereof, and thus when the piston rod of the cylinder (48) extends and raises the upper frame unit, there comes a point in time when the piston rod is at least substantially fixedly oriented with respect to the upper frame unit and substantially orthogonal to the lower frame unit

because of the angle in the lower frame unit. This point in time is approximately shown in Figure 6 of Taylor because if a line was drawn along the extending piston rod, that line would be *at least substantially orthogonal* to the lower frame unit as claimed.

It is noted that the phrase “Test stand for motor vehicles” in the preamble of claim 11 has not been given patentable weight because the body of the claim does not rely upon the said phrase for completeness (ie. the body of the claim does not require a test stand for a motor vehicle).

With respect to claim 12, Taylor suggests the lifting means being disposed in corner zones of the frame units (Fig. 1).

With respect to claim 14, Taylor suggests that the piston rods are independently operable (col. 5, lines 1-9).

With respect to claim 15, Taylor suggests the lifting means being operable to tilt any load thereon, and thus a vehicle, in at least one of a longitudinal and transverse direction relative to an axis of the load/vehicle (Figs. 1 & 5).

35 U.S.C. § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor (2,929,519).

With respect to independent claim 16, Taylor suggests a test stand having a tipping device comprising:

- a lower frame unit (12);
- an upper frame unit (the pair of supporting rails 16) configured to tip relative to the lower frame unit; and
- lifting units (two fore 14 and two aft 15 linkage assemblies; Fig. 5) at least substantially fixedly oriented with respect to the upper frame unit, as discussed above, and extendable in an axial direction, each of the lifting units operable to independently (col. 5, lines 1-9) tip the upper frame.

Taylor fails to explicitly teach the upper frame unit configured to secure a motor vehicle. However, it would have been obvious to one having ordinary skill in the art armed with said teaching that the upper frame unit of Taylor could be used to secure a motor vehicle.

The motivation being that Taylor sets forth that the upper frame unit thereof can be used to handle heavy equipment and the like. Since a motor vehicle is “heavy equipment”, supporting a motor vehicle on the upper frame unit would be in the realm of one having ordinary skill in the art.

With respect to claim 17, Taylor suggests each of the lifting units being independently extendable (col. 5, lines 1-9).

With respect to claim 18, Taylor suggests the lifting units being operable to tilt any load thereon, and thus a vehicle, in at least one of a longitudinal and transverse direction relative to an axis of the load/vehicle (Figs. 1 & 5).

With respect to claim 19, Taylor suggests the lifting units comprising four piston rods (the piston rods of each of the respective cylinder hoists, 48) disposed in corner zones of the frame units (Fig. 1).

Allowable Subject Matter

Claim 20 has been found to be allowable over the prior art.

CONCLUSION


The Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). The Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Eric S. McCall whose telephone number is (571) 272-2183.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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Nov. 16, 2006